The bipartisan bill we are introducing aims to update the SEC's outdated civil penalties statutes. This bill strives to make potential and current offenders think twice before engaging in misconduct by raising the maximum statutory civil monetary penalties, directly linking the size of the penalties to the amount of losses suffered by victims of a violation, and substantially increasing the financial stakes for serial offenders of our Nation's securities laws.

Specifically, our bill would broaden the SEC's options to tailor penalties to the particular circumstances of a given violation. In addition to raising the per violation caps for severe, or ''third tier,'' violations to $1 million per offense for individuals and $10 million per offense for entities, the legislation would also give the SEC more options to collect greater penalties based on the ill-gotten gains of the violator or on the financial harm to investors.

Our bill also seeks to deter repeat offenders on Wall Street through two provisions. The first would authorize the SEC to triple the penalty cap applicable to recidivists who have been held either criminally or civilly liable for securities fraud within the previous 5 years. The second would allow the SEC to seek a civil penalty against those who violate existing Federal court or SEC orders, an approach that would be more efficient, effective, and flexible to the current civil contempt remedy. These updates would greatly enhance the SEC's ability to levy tough penalties against repeat offenders.

The SEC's current Director of Enforcement said several months ago that ''a centerpiece'' of the Agency's efforts to ''hold wrongdoers accountable and deter future misconduct . . . is ensuring that we are using every tool in our toolkit, including penalties that have a deterrent effect and are viewed as more than the cost of doing business.'' Our bill will strengthen the SEC's existing tools, which will further increase deterrence and substantially ratchet up the costs of committing fraud.

All of our constituents deserve a strong regulator that has the necessary tools to go after fraudsters and pursue the difficult cases arising from our increasingly complex financial markets. The Stronger Enforcement of Civil Penalties Act will enhance the SEC's ability to demand meaningful accountability from Wall Street, which in turn will increase transparency and confidence in our financial system. I urge our colleagues to support this important bipartisan legislation.

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By Mr. THUNE (for himself and Mr. LANKFORD):

S. 839. A bill to require agencies to complete a regulatory impact analysis before issuing a significant rule, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. THUNE. Madam President, I am also introducing legislation today to help prevent economically damaging regulations from going into effect in the first place. My bill, the Regulatory Transparency Act, would require Federal Agencies to conduct a more transparent and objective analysis of the impact a proposed regulation would have on the economy, especially on small businesses. It would also require Agencies to justify the need for the regulation and consider other less burdensome ways of meeting the same goal. And, importantly, it would require Agencies to consider whether a sunset date for the regulation would be appropriate, which could help reduce the long-term buildup of irrelevant or outdated Federal regulations.

There is a lot more that I could say about the regulations the Biden administration has implemented or is trying to put in place, but I will stop here. Suffice it to say that President Biden has made use of the regulatory system to advance an agenda that will negatively affect our Nation, and I will continue to do everything I can to push back against the Biden administration's many troubling regulations and to protect our economy and the American people from the regulatory burden the administration has put in place.

Madam President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 839

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Regulatory Transparency Act of 2023''.

**SEC. 2. DEFINITIONS.**

Section 601 of title 5, United States Code, is amended—

(1) in paragraph (6), by striking ''and'' at the end;

(2) in paragraph (7) by striking the period at the end and inserting a semicolon;

(3) in paragraph (8)—

(A) by striking ''RECORDKEEPING REQUIREMENT.—The'' and inserting ''the''; and

(B) by striking the period at the end and inserting ''; and''; and

(4) by adding at the end the following:

''(9) the term 'significant rule' means any final rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget determines is likely to—

''(A) have an annual effect on the economy of $100,000,000 or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

''(B) create a significant inconsistency or otherwise interfere with an action taken or planned by another Federal agency;

''(C) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

''(D) raise novel legal or policy issues.''.

**SEC. 3. REGULATORY IMPACT ANALYSES; CONSIDERATION OF SUNSET DATES.**

(a) IN GENERAL.—Chapter 6 of title 5, United States Code, is amended by adding at the end the following:

**''§ 613. Regulatory impact analyses**

''(a) IN GENERAL.—Before issuing any proposed rule, final rule, or interim final rule that meets the economic threshold of a significant rule described in section 601(9)(A), an agency shall conduct a regulatory impact analysis to evaluate the proposed rule, final rule, or interim final rule, as applicable.

''(b) REGULATORY IMPACT ANALYSES.—An analysis under subsection (a) shall—

''(1) be based upon the best reasonably obtainable supporting information, consistent with Executive Order 12866 (5 U.S.C. 601 note; relating to regulatory planning and review) and any other relevant guidance from the Office of Management and Budget;

''(2) be transparent, replicable, and objective;

''(3) describe the need to be addressed and how the rule would address that need;

''(4) analyze the potential effects, including the benefits and costs, of the rule;

''(5) to the maximum extent practicable, consider the cumulative regulatory burden on the regulated entity under subsection (c);

''(6) consider the potential effects on different types and sizes of businesses, if applicable;

''(7) for a proposed rule that is likely to lead to a significant rule, or a final or interim final rule that is a significant rule—

''(A) describe the need to be addressed, including—

''(i) the supporting information demonstrating the need;

''(ii) the failures of private markets that warrant new agency action, if applicable; and

''(iii) whether existing law, including regulations, has created or contributed to the need;

''(B) define the baseline for the analysis;

''(C) set the timeframe of the analysis;

''(D) analyze any available regulatory alternatives, including—

''(i) if rulemaking is not specifically directed by statute, the alternative of not regulating;

''(ii) any alternatives that specify performance objectives rather than identify or require the specific manner of compliance that regulated entities must adopt;

''(iii) any alternatives that involve the deployment of innovative technology or practices; and

''(iv) any alternatives that involve different requirements for different types or sizes of businesses, if applicable;

''(E) identify the effects of the available regulatory alternatives described in subparagraph (D);

''(F) identify the effectiveness of tort law to address the identified need;

''(G) to the maximum extent practicable, quantify and monetize the benefits and costs of the selected regulatory alternative and the available alternatives under consideration;

''(H) discount future benefits and costs quantified and monetized under subparagraph (G);

''(I) to the maximum extent practicable, evaluate non-quantified and non-monetized benefits and costs of the selected regulatory alternative and the available alternatives under consideration; and

''(J) characterize any uncertainty in benefits, costs, and net benefits.

''(c) CUMULATIVE REGULATORY BURDEN.—In considering the cumulative regulatory burden under subsection (b)(5), an agency shall—

''(1) identify and assess the benefits and costs of other regulations require compliance by the same regulated entities to attempt to achieve similar regulatory objectives;

''(2) evaluate whether the rule is inconsistent with, incompatible with, or duplicative of other regulations; and

''(3) consider whether the estimated benefits and costs of the rule increase or decrease as a result of other regulations issued by the agency, including regulations that are not yet fully implemented, compared to the benefits and costs of that rule in the absence of such regulations.

''(d) LESS BURDENSOME ALTERNATIVES.—If, after conducting an analysis under subsection (a) for a proposed rule that is likely to lead to a significant rule, or a final rule or interim final that is a significant rule, the agency selects a regulatory approach that is not the least burdensome compared to an available regulatory alternative, the agency shall include—

''(1) in the summary section of the preamble a statement that the selected approach is more burdensome than an available regulatory alternative; and

''(2) a justification, with supporting information, for the selected approach.

''(e) REGULATORY DETERMINATION.—

''(1) IN GENERAL.—Except as expressly provided otherwise by law, an agency may issue a proposed rule, final rule, or interim final rule only upon a reasoned determination that the benefits of the rule justify the costs of the rule.

''(2) REQUIREMENTS.—

''(A) ALTERNATIVE.—Whenever an agency is expressly required by law to issue a rule, the agency shall select a regulatory alternative that has benefits that exceed costs and complies with law.

''(B) COMPLIANCE.—If it is not possible to comply with the law by selecting a regulatory alternative that has benefits that exceed costs, an agency shall select the regulatory alternative that has the least costs and complies with law.

**''§ 614. Consideration of sunset dates**

''(a) SUNSET.—Not later than July 1, 2023, an agency shall, for each proposed rule or interim final rule of the agency that meets the economic threshold of a significant rule described in section 601(9)(A), include an explicit consideration of a sunset date for the rule.

''(b) ELEMENTS.—The consideration described in subsection (a) for a proposed rule or interim final rule described in that subsection shall include an assessment of whether the rule—

''(1) could become outmoded or outdated in light of changed circumstances, including the availability of new technologies; or

''(2) could become excessively burdensome after a period of time due to, among other things—

''(A) disproportionate costs on small businesses;

''(B) the net effect on employment, including jobs added or lost in the private sector; and

''(C) costs that exceed benefits.

''(c) PUBLICATION.—A summary of the consideration described in subsection (a) for a proposed rule or interim final rule described in that subsection shall be published in the Federal Register along with the proposed or interim final rule, as applicable.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 6 of title 5, United States Code, is amended by adding at the end the following:

''613. Regulatory impact analyses.
''614. Consideration of sunset dates.''.

**SEC. 4. JUDICIAL REVIEW.**

Section 611(a) of title 5, United States Code, is amended, in paragraphs (1) and (2), by striking ''and 610'' and inserting ''610, and 613''.

By Mr. BOOKER (for himself and Mr. DURBIN):

S. 850. A bill to incentivize States and localities to improve access to justice, and for other purposes; to the Committee on the Judiciary.

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By Mr. BOOKER (for himself and Mr. DURBIN):

S. 851. A bill to include a Federal defender as a nonvoting member of the United States Sentencing Commission; to the Committee on the Judiciary.

Mr. BOOKER. Madam President, this Saturday, March 18, will mark the 60th anniversary of the unanimous and landmark Supreme Court decision in Gideon v. Wainwright, which held that every American has the constitutional right in criminal cases, regardless of their wealth and where they were born—they have a right, fundamentally, to the public defense system that we know today.

Before Gideon was decided, people accused of crimes were left to fend for themselves, having to navigate arraignments, plea bargains, jury decisions, trials, cross-examination of witnesses—every part of the criminal prosecution, they had to do it themselves while facing government prosecutors who had the legal upper hand.

Clarence Earl Gideon was a 51-year-old with an eighth grade education who ran away from home in middle school. History describes him as a ''drifter'' who spent time in and out of prison for nonviolent crimes, but history would also come to know him as someone who fundamentally transformed our legal system so that any person without resources accused of a crime has a due process right to a fair trial. You can't have a fair trial without counsel.

In 1961, Gideon was arrested for stealing $5 in change and beer, allegedly doing so from the Bay Harbor Poolroom in Panama City, FL. As James Baldwin would write the same year as Gideon's arrest, ''Anyone who has ever struggled with poverty knows how extremely expensive it is to be poor.''

Gideon, who had spent much of his life in poverty, was too poor to hire an attorney and asked the trial court to appoint one for him. The court denied his request, saying that only indigent defenders facing the death penalty are entitled to a lawyer.

Gideon assumed the burden of defending himself at trial, becoming his own lawyer. He made an opening statement to the jury and cross-examined the prosecution's witnesses. He presented witnesses in his own defense. He declined to testify himself and made arguments emphasizing his innocence.

Despite his valiant efforts, the jury found Gideon guilty of this $5 theft, and he was sentenced to 5 years' imprisonment. But Gideon felt he had been fundamentally deprived of his due process rights.

Determined to prove his innocence, Gideon penciled a five-page, handwritten petition asking the nine Justices of the Supreme Court to consider his case. Against all odds, the Supreme Court granted Gideon's petition.

Gideon would tell the Supreme Court:

> It makes no difference how old I am or what color I am or which church I belong to, if any. The question is I did not get a fair trial. The question is very simple. I requested the court to appoint me [an] attorney and the court refused.

In the Court's unanimous decision, they held that ''reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.''

Gideon's case was sent back to the lower court, where he had a lawyer to defend him. It took the jury only 1 hour to come to a verdict and acquit him.

From that time on, the public defense system as we know it today came into existence. Folks who couldn't afford a lawyer 60 years ago are now guaranteed basic legal protection. Public defenders play a sacrosanct role in our society. Every one of America's public defenders embarks on the noble work that is the cornerstone of our legal system, ensuring that every citizen has a right to a fair trial, that every citizen has access to justice within the justice system.

Yet the promise of Gideon, the promise of this decision, still remains unfulfilled. The public defense is under such strain that in many places, it barely functions.

Justice Black declared that ''lawyers in criminal courts are necessities, not luxuries.'' But too often across our country, adequate legal representation is a luxury only afforded to those who are wealthy enough to hire a lawyer.

Despite their important and essential work to the cause of justice, public defenders carry crushing caseloads that strain their ability to meet their legal and ethical obligations to provide effective representation. According to a 2019 Brennan Center report, only 27 percent of county-based and 21 percent of State-based public defender offices have enough attorneys to adequately handle their caseloads. There are counties and States in America where public defenders are responsible for more than 200 cases at one time.

The quality of public defenders also varies from State to State, town to town, case to case. Compared to prosecutors and other attorneys, public defenders are woefully underresourced and underpaid. That is why today, with my friend and colleague from Illinois, Senator DURBIN, I am introducing the Providing a Quality Defense Act to provide funding to local governments to hire more public defenders so that those accused of crimes can receive adequate representation.

The bill will provide funding to increase salaries for public defenders so that they can have pay parity with the prosecutors they face. It will require